



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-929]

Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce ("Department") preliminarily determines that certain small diameter graphite electrodes ("SDGE") are being exported from the United Kingdom ("U.K.") to the United States by UK Carbon and Graphite Co., Ltd. ("UKCG") in circumvention of the antidumping duty order on SDGE from the People's Republic of China ("PRC"),<sup>1</sup> as provided in section 781(b) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-5848.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2010, SGL Carbon LLC and Superior Graphite Co. ("Petitioners") filed a submission alleging that UKCG, a company located in the United Kingdom, is engaged in circumvention of the *SDGE Order* by importing artificial graphite rods/unfinished SDGE

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<sup>1</sup> See *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 8775 (February 26, 2009) ("*SDGE Order*").

components<sup>2</sup> from the PRC to the United Kingdom, performing minor completion and assembly on these items, and exporting finished subject merchandise to the United States as SDGE of U.K. origin.<sup>3</sup> In this submission, Petitioners requested that the Department initiate a scope inquiry to clarify whether the unfinished graphitized SDGE components imported by UKCG from the PRC are included in the *SDGE Order*. In the alternative, should the Department find it appropriate based on the available information, Petitioners requested that the Department initiate an anticircumvention proceeding, pursuant to 19 CFR 351.225(h), to determine whether the importation of the PRC-origin SDGE components by UKCG for finishing in the United Kingdom and subsequent sale to the United States constitutes circumvention of the *SDGE Order*, as defined in section 781(b) of the Act.

On March 18, 2011, the Department initiated an anticircumvention inquiry on imports of SDGE exported by UKCG.<sup>4</sup> This inquiry covers the period July 1, 2009, through June 30, 2010.

### *Questionnaires*

Subsequent to the initiation of this proceeding, the Department issued questionnaires to UKCG regarding the nature of its sales of SDGE to the United States and sourcing of inputs

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<sup>2</sup> According to Petitioners, the unfinished merchandise in question is defined in UKCG's submissions as, e.g., "graphite electrodes," "rods," "graphite billets," "graphite shapes," "synthetic graphite electrode rod," and "re-machined graphite electrode." Petitioners characterize these inputs as "unfinished SDGE," whereas UKCG refers to them as "blanks" or "artificial graphite." For customs purposes, these materials are, generally, classified under Harmonized Tariff Schedule ("HTS") sub-heading 3801.10.00, defined as "Artificial Graphite; Colloidal or Semi-Colloidal Graphite; Preparations Based on Graphite or Other Carbon in the Form of Pastes, Blocks, Plates or Other Semi-Finished Goods." For ease of reference, these materials are referred to as "unfinished SDGE components" or "artificial graphite rods" throughout this notice.

<sup>3</sup> See Letter from Petitioners to the Department entitled, "Small Diameter Graphite Electrodes from the People's Republic of China," dated October 12, 2010 ("Petitioners' Initiation Request").

<sup>4</sup> See *Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Anticircumvention Inquiry*, 76 FR 14910, 14912, 14916-17 (March 18, 2011) ("Initiation Notice").

from the PRC on May 20, 2011,<sup>5</sup> August 3, 2011,<sup>6</sup> September 16, 2011,<sup>7</sup> and January 26, 2012.<sup>8</sup> UKCG submitted timely responses to the Department on June 24, 2011,<sup>9</sup> September 6, 2011,<sup>10</sup> September 23, 2011,<sup>11</sup> and February 6, 2012.<sup>12</sup> UKCG provided further information on July 18, 2011,<sup>13</sup> July 19, 2011<sup>14</sup> and October 7, 2011.<sup>15</sup> Petitioners submitted comments regarding

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<sup>5</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Supplemental Questionnaire,” dated May 20, 2011.

<sup>6</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Second Supplemental Questionnaire,” dated August 3, 2011.

<sup>7</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Second Supplemental Questionnaire,” dated September 16, 2011. Please note that the Department made an inadvertent error by not changing the title of this letter to reflect the proper sequence, and this document is actually the third, and not the second, supplemental questionnaire.

<sup>8</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Post-Preliminary Determination Supplemental Questionnaire,” dated January 26, 2012. Please note that the Department made an inadvertent error by not changing the title of this letter to reflect the proper sequence, and this document is actually the fourth supplemental questionnaire issued prior to this preliminary determination.

<sup>9</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Supplemental Questionnaire Response,” dated June 24, 2011 (“UKCG’s First SQR”).

<sup>10</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Second Supplemental Questionnaire Response,” dated September 6, 2011; Letter from UKCG to the Department entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Supplement to Second Supplemental Questionnaire Response,” dated September 9, 2011; and Letter from UKCG to the Department entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Correction to Second Supplemental Questionnaire Response,” dated September 30, 2011 (collectively, “UKCG’s Second SQR”).

<sup>11</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Third Supplemental Questionnaire Response,” dated September 23, 2011 and Letter from UKCG to the Department entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Third Supplemental Questionnaire Response – Exhibits 12-14,” dated September 26, 2011 (collectively “UKCG’s Third SQR”).

<sup>12</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Fourth Supplemental Questionnaire Response,” dated February 6, 2012 (“UKCG’s Fourth SQR”).

<sup>13</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Response to Petitioners’ Letter of July 11, 2011,” dated July 18, 2011 (“UKCG’s July 18 Submission”).

<sup>14</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Submission of Renewed European Community Binding Origin Information,” dated July 19, 2011 (“UKCG’s BOI Submission”).

<sup>15</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Comments and Submission Regarding Value Added Calculations,” dated October 7, 2011 (“UKCG’s Value-Added Submission”).

UKCG's submissions, and the anticircumvention proceeding in general, on July 11, 2011,<sup>16</sup> September 20, 2011,<sup>17</sup> October 7, 2011,<sup>18</sup> October 18, 2011,<sup>19</sup> and February 13, 2012.<sup>20</sup>

### *Surrogate Country and Surrogate Value Submissions*

On August 15, 2011, we requested that the Import Administration's Office of Policy provide a list of surrogate countries that are economically similar to the PRC for use in this proceeding.<sup>21</sup> On August 29, 2011, the Office of Policy provided the requested list.<sup>22</sup> On September 2, 2011, the Department notified interested parties of the potential surrogate country list and requested that parties provide comment on surrogate country selection and surrogate factors valuation.<sup>23</sup> UKCG provided comments on surrogate country selection on September 16, 2011.<sup>24</sup> Petitioners provided comments on surrogate country and surrogate value ("SV") selection on September 20, 2011.<sup>25</sup> UKCG provided SV comments on September 23, 2011.<sup>26</sup>

### *Verification*

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<sup>16</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from UK Carbon and Graphite Company, Ltd.," dated July 11, 2011 ("Petitioners' Comments on Processing and Request for Expedition of the Proceeding").

<sup>17</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China," dated September 20, 2011 ("Petitioners' Comments on UKCG's Second SQR").

<sup>18</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China," dated October 7, 2011 ("Petitioners' Comments on UKCG's Third SQR").

<sup>19</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China," dated October 18, 2011 ("Petitioners' Rebuttal to UKCG's Value-Added Submission").

<sup>20</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China ("PRC"): Pre-Verification Comments," dated February 13, 2012 ("Petitioners' Pre-Verification Comments").

<sup>21</sup> See Memorandum entitled, "Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Selection of Surrogate Countries," dated August 15, 2011.

<sup>22</sup> See Memorandum entitled, "Request for a List of Surrogate Countries for Anticircumvention Inquiry of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China," dated August 29, 2011 ("Surrogate Country List").

<sup>23</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: List of Surrogate Countries," dated September 2, 2011.

<sup>24</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Country Comments," dated September 16, 2011 ("UKCG's Surrogate Country Comments").

<sup>25</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Country Selection," dated September 16, 2011 ("Petitioners' Surrogate Country Comments").

<sup>26</sup> See Letter entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Comments on Surrogate Values," dated September 23, 2011 ("UKCG's Surrogate Value Comments").

On February 16 and February 17, 2012, the Department conducted a verification of the aforementioned questionnaire responses at UKCG's facilities in Belper and Rotherham, United Kingdom, in accordance with 19 CFR 351.307. The Department used standard verification procedures, including the examination of relevant accounting and production records, as well as original source documents provided by UKCG.<sup>27</sup>

#### Scope of the Antidumping Duty Order

The merchandise covered by this order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by this order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to this order are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

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<sup>27</sup> See Memorandum to the File entitled, "Verification of Responses of UK Carbon & Graphite Company Limited ("UKCG") in the Anticircumvention Inquiry of Certain Graphite Electrodes From the People's Republic of China ("PRC")," dated concurrently with this notice. On February 21, 2012, UKCG submitted onto the record the exhibits accepted by the Department at verification. See Letter from UKCG to the Department entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Verification Exhibits," dated February 21, 2012. These two documents are referred to as "UKCG's Verification Report," collectively.



### Scope of the Anticircumvention Inquiry

The products covered by this inquiry are small diameter graphite electrodes produced by UKCG from PRC-manufactured artificial/synthetic graphite forms, of a size and shape (*e.g.*, blanks, rods, cylinders, billets, blocks, *etc.*) which requires additional machining processes (*i.e.*, tooling and shaping) to become a finished SDGE (or graphite pin joining system). The SDGE products in question are finished graphite electrodes manufactured by UKCG from PRC-originated artificial/synthetic graphite forms. While UKCG argues that the SDGE it produces and imports to the United States are of U.K. origin under U.K. law, the focus and intent of this inquiry is to determine whether artificial/synthetic graphite forms 1) manufactured in the PRC; 2) exported to the United Kingdom for processing (finishing); and 3) re-exported to the United States as U.K. origin merchandise constitute circumvention of the *SDGE Order* under 781(b) of the Act.

### Period of Review

The period of review (“POR”) is July 1, 2009, through June 30, 2010. This period corresponds to UKCG most recent complete fiscal year (“FY”) subsequent to the issuance of the *SDGE Order*.

### Methodology for Valuing Inputs from the Country Subject to the Antidumping Duty Order on SDGE

In the less than fair value (“LTFV”) investigation of SDGE from the PRC, the Department treated the PRC as a non-market economy (“NME”) country.<sup>28</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country

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<sup>28</sup> See *Small Diameter Graphite Electrodes From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part*, 73 FR 49408, 49412 (August 21, 2008), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049 (January 14, 2009).

shall remain in effect until revoked by the administering authority.<sup>29</sup> No party has challenged the designation of the PRC as an NME country in this anticircumvention inquiry. Therefore, we continue to treat the PRC as an NME country for purposes of the preliminary determination of this anticircumvention inquiry.

When conducting proceedings involving imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (“NV”), in most cases, on the NME producer’s factors of production (“FOP”), valued in a surrogate market-economy (“ME”) country considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using “to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise.” In this anticircumvention inquiry, the artificial graphite/unfinished SDGE employed by UKCG to produce finished SDGE are produced in the PRC.

UKCG asserts that the statute neither requires nor permits the Department to use a surrogate for valuing the input sourced from the PRC in anticircumvention proceedings, and that doing so here would be unlawful. UKCG argues that the NME provisions apply only to the determination of NV, which is not calculated in anticircumvention inquiries, and thus a SV should not be applied to value inputs to merchandise produced by a ME company in an ME country. UKCG argues that the provisions of the statute that allow for the application of SVs require that subject merchandise be exported from an NME country.<sup>30</sup> Furthermore, UKCG

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<sup>29</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 60632 (October 25, 2007).

<sup>30</sup> See UKCG’s Surrogate Value Comments at 1-5.



contends that, the meaning of “value”<sup>31</sup> under section 781(b)(1)(D) of the Act, must be defined (as is implied by section 781(b)(2)(E) of the Act) to mean actual paid values, and not SVs. Therefore, UKCG contends that the Department should conduct the relevant analyses using actual prices paid for the input rather than constructing a NV for the input based on the NME FOP methodology.<sup>32</sup>

We disagree with UKCG’s assertion that the use of an SV for the valuation of the artificial graphite/unfinished SDGE input is inappropriate in the instant case. The material input in question, the only raw material input of any significance in this analysis, is produced in the PRC, an NME country. While real prices paid for PRC-produced inputs are typically used in the cost buildup for ME companies in ME proceedings, we note that this is an anticircumvention proceeding initiated under the antidumping duty order on SDGE from the PRC, which is an NME proceeding. The purpose of this proceeding is not to determine the antidumping margin of a U.K. firm, but rather to determine whether PRC-produced merchandise is being sold to the United States in circumvention of the *SDGE Order* on the PRC. Thus, an analysis of UKCG’s input costs falls directly and explicitly under the purview of the Department’s NME methodology.<sup>33</sup> As such, because key elements of the Department’s analysis under section 781(b)(1)(D) of the Act necessitates obtaining a value for an NME input, we have determined to use an SV for this input from an appropriate ME, consistent with both section 773(c)(1) of the

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<sup>31</sup> See UKCG’s Surrogate Value Comments at 3 (citing, e.g., *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860 (U.S. 1986) (quoting *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934))).

<sup>32</sup> See UKCG’s Surrogate Value Comments at 1-5.

<sup>33</sup> See, e.g., *Steel Wire Garment Hangers from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007, 27008 (May 10, 2011) (“*Hangers Anticircumvention Prelim*”), unchanged in *Steel Wire Garment Hangers From the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011) (“*Hangers Anticircumvention Final*”); *Certain Tissue Paper Products From the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21584-85 (April 22, 2008) (“*Tissue Paper Anticircumvention Prelim*”), unchanged in *Certain Tissue Paper Products from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008) (“*Tissue Paper Anticircumvention Final*”).

Act as well as the Department's past practice.<sup>34</sup> However, because UKCG is a market economy firm in a market economy country, we agree with UKCG that we should use actual costs incurred by UKCG in the United Kingdom in a market economy currency, along with its actual U.S. sales prices, for aspects of the Department's analyses under sections 781(b)(1)(D) and 781(b)(2)(E) of the Act.

UKCG maintains that, because the European Union ("E.U.") has identified UKCG finished graphite electrodes as a product of U.K. origin, the Department should use UKCG's actual purchase prices from the PRC. As explained above, the instant anticircumvention inquiry was initiated to examine specifically whether PRC-manufactured merchandise was, after alteration, re-exported to the United States in circumvention of the *SDGE Order*. The fact that finished SDGE, as exported by UKCG, were identified by the E.U. as products of the United Kingdom is not determinative in the Department's analysis. The purpose of the E.U.'s country of origin analysis was not to determine whether a U.S. antidumping order was being circumvented. Moreover, this country of origin analysis was based on the laws of the E.U. and not the laws of the United States under which the Department conducts this investigation.

#### Surrogate Country

In the August 29, 2011, Surrogate Country List, the Import Administration's Office of Policy identified Ukraine, South Africa, Colombia, the Philippines, Indonesia, and Thailand, as countries comparable to the PRC for the purposes of surrogate valuation. The Department released this list to interested parties and solicited comments regarding the selection of both the surrogate country and SV for the PRC-sourced input in question. On September 16, 2011, UKCG submitted comments suggesting that, in the event that the Department uses SVs to value artificial graphite/unfinished electrodes, the Department should base its SV calculations on

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<sup>34</sup> See, e.g., *id.*

export data from Ukraine provided by Global Trade Atlas (“GTA”). UKCG additionally provided public information demonstrating that Ukraine and South Africa are economically comparable to the PRC and significant producers of artificial graphite.<sup>35</sup> On September 20, 2011, Petitioners submitted comments arguing that Ukraine is the most appropriate surrogate country based on the fact that: a) there is a well-developed graphite electrode industry in the country; b) public information confirms the existence of a company which produces significant volumes of identical merchandise; and c) Ukraine is a major importer of Chinese inputs similar to those sourced by UKCG.<sup>36</sup> Because record evidence identified Ukraine as an economically comparable country to the PRC and a significant producer of artificial graphite, the Department has preliminarily selected Ukraine as the primary surrogate country from which to value UKCG’s PRC-sourced inputs.

#### Factor Valuation

Petitioners suggest that the Department value UKCG’s artificial graphite/unfinished SDGE inputs using the weighted-average value of Ukrainian imports under HTS subcategories 3801.10 (“Artificial Graphite”) and 8545.11 (“Carbon Or Graphite Electrodes, Of A Kind Used For Furnaces”).<sup>37</sup> Petitioners additionally suggest removing certain “aberrant” values representing imports from Russia and Switzerland from the HTS categories.<sup>38</sup>

UKCG rebuts Petitioners’ recommendation to include Ukrainian imports under HTS 8545.11, which includes finished SDGE. UKCG additionally argues that, while the 3801.10 HTS category better reflects the input it consumes, in this case, using the value of Ukrainian imports under HTS 3801.10 results in an unreasonable average value, seven times higher than the value of the finished product. Thus, because neither category appears to be appropriate to

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<sup>35</sup> See UKCG’s Surrogate Country Comments.

<sup>36</sup> See Petitioners’ Surrogate Country Comments.

<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

value artificial graphite/unfinished SDGE, UKCG argues that, should the Department conduct the relevant analysis using an SV, the Department should use Ukrainian or South African export data under HTS category 3801.10 rather than the import data suggested by Petitioners.<sup>39</sup>

As an initial matter the Department finds that, because the PRC-manufactured merchandise imported into the United Kingdom is not finished, HTS 3801.10 (which provides for semi-finished artificial graphite forms) is more specific to the product than HTS 8545.11 (which provides for finished “carbon electrodes; of a kind used for furnaces”). Additionally, as discussed above, we have determined Ukraine to be the appropriate primary surrogate country for this proceeding. Accordingly, we have selected Ukrainian imports under HTS 3801.10 to value UKCG’s artificial graphite/unfinished SDGE inputs.<sup>40</sup> In addition, we disagree with Petitioners’ proposal to exclude certain country-specific average unit values (“AUVs”) from this calculation. The Department finds that Petitioners have not supported their contention that the AUV of artificial graphite imports into Ukraine from Russia and Switzerland are aberrational.<sup>41</sup>

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<sup>39</sup> See UKCG’s Surrogate Value Comments at 5-7 and UKCG’s Surrogate Country Comments at Exhibit 1.

<sup>40</sup> The Department’s preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference for data from a single surrogate country. See, e.g., *Certain Cut-To-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) (“CTL Plate/Romania”) and accompanying Issues and Decision Memorandum (“IDM”) at Comment 3. Although our ultimate analysis concludes that the materials in question, as imported by UKCG, are identical to the unfinished SDGE products considered within the subject of the *SDGE Order*, and need only minor processing to be used as finished SDGE under the 8545.11 HTS classification, we agree with UKCG that the input may be properly reported within the 3801.10 HTS subcategory for customs purposes. As such, for the purpose of selecting a SV for semi-manufactured artificial graphite cylinders from customs data, we find subcategory 3801.10 to be the most appropriate classification for this kind of input (however similar the input may be to the finished products imported under HTS 8545.11). Finally, we do not believe it appropriate to mix HTS categories to determine the relevant surrogate value, as our normal practice is to select the most specific single category to the product at issue. See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010) and accompanying IDM at Comment 19 (“With the exception of unusual circumstances, the Department’s preference is to select the single best value and not to average multiple HTS categories.”).

<sup>41</sup> Department precedent requires parties to corroborate a claim of aberrationality, and that citing to the mere existence of outlying price points does not constitute *prima facie* evidence of aberrationality. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) and accompanying IDM at Comment 15 and *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of*

Though Ukrainian imports under HTS 3801.10 may result in an unreasonably high surrogate AUV when Russian and Swiss data is excluded (\$31.02 U.S. dollars (“USD”) per kilogram (“Kg”)), when the data from these two countries is included, we find the resulting AUV for Ukrainian imports under HTS 3801.10 to be appropriate for the purposes of valuing artificial graphite in this case (\$3.39 USD per Kg), based on the Department’s standard SV methodology. As such, in response to UKCG’s argument that Ukrainian imports under HTS 3801.10 provide an unreasonable average value seven times higher than the value of the finished product, as provided by Petitioners with Russian and Swiss data excluded, we note that the use of the full dataset (including data from both countries) results in a surrogate AUV (\$3.39 per Kg) which is lower than that of the value of Ukrainian imports of finished product under HTS 8545.11 (\$4.54 per Kg).

With respect to UKCG’s alternative proposal to use Ukrainian or South African export prices to value the input, it is the Department’s long standing practice to use import, not export, data when considering SVs.<sup>42</sup> Moreover, we note that UKCG provides no argument as to why Ukrainian import data, when taken as a whole, are unusable or why export data would be preferable in the alternative. As such, we see no reason to depart from the standard practice of using publicly available, non-export, tax-exclusive, product-specific, and contemporaneous data from the primary surrogate.

Therefore, the Department has preliminarily determined to use Ukrainian import values under HTS 3801.10 to value artificial graphite/unfinished SDGE imported from the PRC.

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*China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 9. In particular, we do not believe it appropriate to exclude the data from a country (Russia) that provides 91 percent of Ukraine’s imports because of a relatively low AUV without any specific evidence as to why such data are inappropriate to value artificial graphite inputs.

<sup>42</sup> See, e.g., *CTL Plate/Romania* and accompanying IDM at Comment 3. See also, *Silicon Metal from the People’s Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews*, 72 FR 58641 (October 16, 2007) and accompanying IDM at Comment 5.

### Extension of Determination Deadline

Pursuant to section 781(f) of the Act, to the maximum extent practicable, the Department shall issue a final determination within 300 days from the date of initiation of the antidumping circumvention inquiry. On December 14, 2011,<sup>43</sup> and March 26, 2012,<sup>44</sup> the Department extended the deadline for issuance of the final determination in the instant proceeding. As a result, the final determination of this anticircumvention inquiry is currently due June 20, 2012. Due to the complicated nature of this proceeding and the extent of comments expected to be received from interested parties, the current deadline is no longer practicable. As such, we hereby extend the deadline for the final determination until July 31, 2012.

### Use of Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available (“FA”) if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

For this preliminary determination, in accordance with section 776(a) of the Act, we have determined that the use of FA is warranted for a portion of the pattern of trade analysis, as discussed below.

### Affirmative Preliminary Determination of Circumvention

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<sup>43</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Extension of Deadline for Issuance of Final Determination,” dated December 14, 2011.

<sup>44</sup> See Letter entitled, “Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Second Extension of Deadline for Issuance of Final Determination,” dated March 26, 2012.

For the reasons described below, we preliminarily determine that, pursuant to section 781(b) of the Act, circumvention of the *SDGE Order* is occurring by reason of the exportation of semi-manufactured artificial graphite/unfinished SDGE components from the PRC sold to and imported by UKCG, which subsequently undergo further manufacture in the United Kingdom before exportation as finished SDGE to the United States.

#### Applicable Statute

Section 781 of the Act addresses circumvention of antidumping or countervailing duty orders.<sup>45</sup> With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides that if: (A) the merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in a third country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the Department determines that action is appropriate to prevent evasion of an order, the Department, after taking into account any advice provided by the International Trade Commission (“ITC”) under section 781(e) of the Act may include such imported merchandise within the scope of an order at any time an order is in effect.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs the

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<sup>45</sup> Specifically, the legislative history to section 781(b) indicates that Congress intended the Department to make determinations regarding circumvention on a case-by-case basis in recognition that the facts of individual cases and the nature of specific industries vary widely. *See* S. Rep. No. 103-412 (1994), at 81-82.

Department to consider: (A) the level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, none of these five factors, by itself, is controlling on the Department's determination of whether the process of assembly or completion in a third country is minor or insignificant.<sup>46</sup> Accordingly, it is the Department's practice to evaluate each of these factors as they exist in the third country depending on the particular anticircumvention inquiry.<sup>47</sup> Further, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in a third country in an antidumping duty order. Specifically, the Department shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble in the merchandise which is subsequently imported into the United States; and (C) whether imports into the third country of the merchandise have increased after the initiation of the LTFV investigation that resulted in the issuance of an order.

#### Statutory Analysis

##### *(A) Whether Merchandise Imported Into The United States Is Of The Same Class Or Kind As Merchandise That Is Subject To The SDGE Order*

The finished products, as sold by UKCG to the United States, are identical to those covered by the *SDGE Order*. This is corroborated by UKCG's product list,<sup>48</sup> as well as the plain language of respondent's submissions in comparison to the language of the scope of the *SDGE*

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<sup>46</sup> See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 893 (1994) at 893.

<sup>47</sup> See *Tissue Paper Anticircumvention Final*, 73 FR at 57592.

<sup>48</sup> See UKCG's First Supplemental Response at Exhibit 6.



*Order*, and no interested party to this proceeding has contested this fact. As such, we find that the finished SDGE products exported to the United States by UKCG are of the same class or kind as other merchandise that is subject to the *SDGE Order*.

*(B) Whether, Before Importation Into The United States, Such Imported Merchandise Is Completed Or Assembled In A Third Country From Merchandise Which Is Subject To The Order Or Produced In The Foreign Country That Is Subject To The Order*

As noted above, the merchandise subject to this proceeding is finished SDGE exported to the United States that is finished in the United Kingdom by UKCG from inputs of PRC-origin unfinished artificial/synthetic graphite forms. There is no dispute between UKCG and Petitioners as to whether this input was produced in the PRC or that it comprises 100 percent of the direct material for the finished product. However, UKCG and Petitioners disagree as to whether the artificial graphite input constitutes “unfinished SDGE” as mentioned by the plain language of the scope.<sup>49</sup>

UKCG has argued that the term “{SDGE} whether or not finished” in the scope of the *SDGE Order* has no meaning in the industry and that UKCG’s imports are of “artificial graphite rods,” which were not included in the *SDGE Order* and are distinct from unfinished SDGE, according to U.S. Customs and U.K./ E.U. Customs findings.<sup>50</sup> To bolster its claim that there is a distinction between artificial graphite and finished SDGE, UKCG has provided a renewed E.U. Binding Origin Information (“BOI”) ruling, stating that UKCG’s processing of artificial graphite blanks into finished SDGE confers U.K. country of origin status on the finished product.<sup>51</sup> UKCG maintains that the inputs do not comprise subject merchandise, as they are classified as artificial graphite under HTS subcategory 3801.10 and not the 8545.11 category contemplated in

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<sup>49</sup> See, e.g., Petitioners’ Comments on Processing and Request for Expedition of the Proceeding at 5-8.

<sup>50</sup> See *Initiation Notice*, 76 FR at 14914-14915.

<sup>51</sup> See UKCG’s First Supplemental Response at 10-14. See also UKCG BOI Submission.

the scope of the *SDGE Order*, a distinction that UKCG claims is recognized by Petitioners.<sup>52</sup>

UKCG argues that, should the Department agree with Petitioners that artificial graphite rods are “unfinished SDGE,” the Department would impermissibly expand the scope of the *SDGE Order* to include all items of artificial graphite, which is clearly beyond the intent of the *SDGE Order*, as artificial graphite can also be used to produce certain non-subject products.<sup>53</sup>

While UKCG concedes that the term “graphite electrode” is occasionally used in its internal recordkeeping and correspondence with suppliers to describe the artificial graphite inputs in question, it contends that this term is a reference to the physical quality of the input materials purchased and the use of this term should not be construed to mean that such materials are interchangeable with finished SDGE.<sup>54</sup> Instead, UKCG emphasizes the use of the term “blanks”<sup>55</sup> as specified in UKCG’s purchase orders to its PRC suppliers), and notes that these “blanks” can also be used to produce certain non-subject products.<sup>56</sup>

The Department finds that the merchandise subject to this anticircumvention inquiry was completed or assembled in the United Kingdom from PRC-origin merchandise that is subject to the *SDGE Order* for the reasons articulated below. As an initial matter, the Department

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<sup>52</sup> See UKCG’s July 18 Submission at 2-3. While UKCG acknowledges that the HTS numbers included in the scope description are not dispositive of the scope of the order, the respondent argues that the inclusion of specific numbers is particularly relevant to the instant proceeding because Petitioners were aware that unfinished blanks or rods could be imported under 3801.10 at the time when the scope language was being formulated during the initial petition and LTFV investigation, but made an explicit decision not to include them in the scope of the *SDGE Order*. As evidence of this decision on the part of Petitioners, UKCG provides documentation (at Exhibit 1 of the same submission) showing that, prior to the initial petition, Petitioners imported “graphite nipple rods” under HTS 3801 and “graphite nipples” under HTS 8545, with the implication that the former were an unfinished version of the latter. See *id.* at Exhibit 1. UKCG provides other similar import documentation to demonstrate that Petitioners have continued to make this distinction between rods and finished products in their importation of materials subsequent to the LTFV investigation, despite their arguments against such a practice in the instant proceeding.

<sup>53</sup> See UKCG’s July 18 Submission at 4. See also UKCG’s First Supplemental Response at 6 and Exhibits 10 and 11.

<sup>54</sup> See UKCG’s First Supplemental Response at 6-7.

<sup>55</sup> See, e.g., Letter from UKCG to the Department entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China: Comments on Surrogate Values,” dated September 23, 2011 (“UKCG’s Surrogate Value Comments”) at 1, stating that the “only item being purchased from China... {is} the rods (sometimes known as blanks).”

<sup>56</sup> See UKCG’s July 18 Submission at 4; UKCG’s First SQR at 6-7 and Exhibits 9, 10, and 11; and UKCG’s Verification Report at Section II.B (“Other Issues”) and Exhibit 1.

continues to find that U.S. and E.U. customs rulings are not controlling in determining whether the artificial graphite imported by UKCG from the PRC is subject to the instant *SDGE Order* within the context of U.S. anticircumvention proceedings, as the two determinations are made for different reasons and under different laws.<sup>57</sup>

We also preliminarily disagree with UKCG's assessment that by not including "artificial graphite" within the language of the scope Petitioners were providing an explicit exclusion for artificial graphite. The scope of an antidumping duty order must be read in its entirety to ensure a full and proper understanding of the scope. In this case, the Petition specifically defined "unfinished {SDGE} within the scope of this petition" as any semi-manufactured SDGE product that "undergo{s} no further processing beyond the graphitization stage other than machining." We find this language is sufficiently broad to include any graphitized product that only requires machining to produce finished SDGE. Additionally, the Petition further states that "{the merchandise subject to the scope includes all SDGE} whether or not with a machine finished outside surface... including finished and unfinished graphite electrodes."<sup>58</sup> The *ITC Final Report* similarly finds that "unfinished SDGE undergo no further processing beyond the graphitization stage other than machining."<sup>59</sup> Therefore, because the Petition and *ITC Final Report* clearly cover artificial/synthetic graphite forms that need only machining to become

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<sup>57</sup> Throughout this proceeding UKCG places repeated emphasis on European Union BOI rulings as evidence that a sovereign government has already determined that UKCG's production substantially transforms the PRC-sourced input in question into a new product of UK origin. See, e.g., UKCG's BOI Submission and UKCG's July 18 Submission. As noted in the *Initiation Notice*, 76 FR at 14917, we again emphasize that rulings from other agencies (whether a European BOI or U.S. Customs and Border Protection ("CBP") ruling) are not legally binding for the purposes of antidumping proceedings in the United States, as we make these decisions for different reasons, including circumvention and whether the merchandise is subject to the antidumping order. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) and accompanying IDM at Comment 1.

<sup>58</sup> See Petitioners' Initiation Request at Exhibit 8 (i.e., Letter from Petitioners entitled, "Antidumping Petition on Small Diameter Graphite Electrodes from China," dated January 17, 2008 ("Petition") at 4 and 6).

<sup>59</sup> See *Small Diameter Graphite Electrodes from China*, Inv. 731-TA-1143 (Final), ITC Pub. 4062, dated February 2009 ("*ITC Final Report*") at I-9.

finished SDGE and the scope of the *SDGE Order* explicitly includes both finished and unfinished SDGE, the Department finds the artificial/synthetic graphite imported by UKCG from the PRC meet the description of merchandise covered by the scope of the *SDGE Order*. Thus, notwithstanding the HTS classification, the general definition of “unfinished SDGE” imparted by the scope language specifically includes the type of artificial/synthetic graphite imported by UKCG into the United Kingdom from the PRC.

While the import information submitted by UKCG does suggest that Petitioners have themselves used the HTS subheadings in a manner that may differentiate between artificial graphite and finished SDGE, the Department does not agree with UKCG’s conclusion that Petitioners’ use of the term electrode “rods” to describe certain imports under 3801.10 constitutes a tacit admission that such unfinished materials are expressly excluded from the scope of the *SDGE Order*. As discussed above, and clearly articulated in the scope itself, the language of the scope of an order is controlling, not the HTS category numbers, which are listed for convenience and customs purposes. Moreover, we do not believe that Petitioners’ classification of imports provides reason to compel the Department to reexamine the intent behind the inclusion of products covered under the initial scope language nor does it provide insight or justification regarding the actions of UKCG during the POR. More compelling is the plain language of the scope of the *SDGE Order*. Based on a full review of the record, including a review of the submissions by the parties, the plain language of the scope of the *SDGE Order*, as well as the language from the Petition and the ITC investigation, as discussed above, the Department preliminarily determines that the unfinished artificial graphite inputs sourced from the PRC by UKCG constitute products identical to the “unfinished electrodes” considered subject merchandise under the scope of the *SDGE Order*.

The Department also disagrees with UKCG's argument that finding UKCG's artificial graphite inputs to be the "unfinished" SDGE covered by the scope of the *SDGE Order* would impermissibly expand the scope to cover all unfinished graphite products. For this preliminary determination, the Department is not finding that all artificial graphite is definitively "unfinished" SDGE subject to the scope of this order, but rather is finding that UKCG's imported artificial graphite rods are unfinished SDGE as described by the plain language of the scope. As with any scope or circumvention proceeding, any such determination is made on a case-by-case basis taking into consideration the specific facts of each proceeding.

Finally, the Department does not agree with UKCG's assertion that, because the input materials may be cut and machined to create certain non-electrode products, that they are necessarily manufactured for use as inputs in a variety of end products and thus are not within the scope of the proceeding. First, the totality of the sourcing/procurement information and corresponding sales documentation on record clearly demonstrate that the inputs in question are either custom ordered for the exact length, width, diameter, and chemical composition required by a customer's order of SDGE or as stock orders for industry-standard sizes of finished electrodes and, as such, the artificial graphite inputs are procured (and, thus, initially manufactured) specifically for an intended end-use as finished SDGE.<sup>60</sup> Moreover, the fact that UKCG is able to demonstrate that the inputs in question may be used, on occasion,<sup>61</sup> to make other non-electrode products does not constitute evidence that the inputs themselves are substantially dissimilar from subject merchandise. While artificial graphite may be used to manufacture non-subject merchandise, this fact has no bearing on the Department's finding that the finished SDGE imported into the U.S. by UKCG was manufactured from artificial graphite

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<sup>60</sup> See UKCG's Verification Report at Section IV. See also UKCG's First SQR at Exhibit 9 and UKCG's Second SQR at Exhibits 4-11.

<sup>61</sup> See UKCG's First SQR at Exhibits 9, 10, and 11; and UKCG's Verification Report at Section II.B. and Exhibit 1.

sourced from the PRC that constitutes unfinished SDGE as specifically discussed by the scope of the *SDGE Order*.

*(C) Whether The Process Of Assembly Or Completion In The Third Country Is Minor Or Insignificant*

Pursuant to section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion is minor or insignificant.

These criteria are:

781(b)(2)(A): the level of investment in the third country;

781(b)(2)(B): the level of research and development in the third country;

781(b)(2)(C): the nature of the production process in the third country;

781(b)(2)(D): the extent of the production facilities in the third country; and

781(b)(2)(E): whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States.

The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.<sup>62</sup> Accordingly, it is the Department's practice to evaluate each of the factors as they exist in the United States or foreign country depending on the particular anticircumvention inquiry.<sup>63</sup> In this anticircumvention inquiry, based on the record, we have considered and evaluated each statutory criterion and all factors in determining whether the process of converting the PRC-sourced artificial graphite rod/unfinished SDGE components in the U.K was

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<sup>62</sup> See SAA at 893.

<sup>63</sup> See *Tissue Paper Anticircumvention Final*, 73 FR at 57592.

minor or insignificant, in accordance with section 781(b)(2) of the Act, consistent with our analysis in prior anticircumvention inquiries.<sup>64</sup>

*781(b)(2)(A) & (B): The Levels of Investment and Research and Development*

On June 24, 2011, UKCG provided further information regarding the level of its investment, including the initial investment in the company in 2002 as well as the amount of fixed assets included in its most recent financial statement.<sup>65</sup> UKCG notes that all investments are used primarily to produce SDGE, but that they can be used to produce larger electrodes as well.<sup>66</sup> A review of the facility used by UKCG to produce subject merchandise during the POR at verification supported the level of investment information previously submitted on the record.<sup>67</sup> UKCG notes that it does not have a separate Research and Development (“R&D”) department or facility, but that “all R&D is conducted as a part of the ongoing improvement of the production process and is conducted as a part of the regular duties of the production and other personnel.”<sup>68</sup>

The record in this case continues to demonstrate that PRC producers have invested extensively in the SDGE industry, which includes significant investment in both manufacturing facilities and production equipment worth many millions of dollars, the bulk of which goes to the heavy industrial processes required for the production of SDGE (e.g., raw material handling,

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<sup>64</sup> See, e.g., *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571 (August 6, 2003) (“*Pasta Circumvention Prelim*”), unchanged in *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003) (“*Pasta Circumvention Final*”); and *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determination of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336, 40347-48 (July 26, 1999) (explaining that Congress has directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components and that any attempt to establish a numerical standard would be contrary to the intent of Congress).

<sup>65</sup> See UKCG First SQR at Exhibits 4, 14, and 15.

<sup>66</sup> See *id.* at 16. Based on UKCG’s response on page 7 and Exhibits 10 and 11 of the same questionnaire, the investments may also be used to produce certain non-SDGE merchandise.

<sup>67</sup> See UKCG’s Verification Report at Section VI.

<sup>68</sup> See *id.* at 4.

mixing, forming, baking, impregnating, and graphitizing), each of which occur prior to the final machining stage.<sup>69</sup> On the contrary, the total worth of UKCG's plant, including its single machine shop and finishing equipment, as shown in UKCG's financial statement, demonstrates that the level of investment required for a PRC manufacturer to produce an unfinished graphitized electrode is far greater than the level of investment needed by UKCG to perform its finishing processes.<sup>70</sup>

Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in the United Kingdom by UKCG in the equipment used to complete the PRC-origin input is minor compared to the level of investment, both in initial capital and equipment, required by the producers of the input in the PRC.<sup>71</sup> Pursuant to section 781(b)(2)(B) of the Act, we also preliminarily find that the UKCG has not provided any substantial evidence of R&D programs or expenditures and that R&D is not a significant factor in UKCG's processing.

*781(b)(2)(C) & (D): The Nature of Production Processes, and Extent of Production Facilities in the United Kingdom*

With regard to the nature of the production process and the extent of its production facilities, UKCG provides a detailed description of its facilities and the processes performed by UKCG in order to transform the artificial graphite/unfinished electrode component into a finished SDGE for shipment to the United States, including all movement, testing, unpacking, packing, and machining processes involved.<sup>72</sup> UKCG also explained that its production facilities

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<sup>69</sup> See Petitioners' July 11, 2011, submission at 3-5 and Exhibit 1.

<sup>70</sup> See Initiation Request at 25-26 and *Initiation Notice*, 76 FR at 14916-17. See Analysis Memo for a full discussion of the proprietary information used in this analysis.

<sup>71</sup> See Analysis Memo.

<sup>72</sup> See UKCG Second SQR at Exhibit 2.



included one manufacturing plant and one sales/administrative location.<sup>73</sup> Details regarding the specific type of production equipment owned by UKCG, as well as the number of workers employed in its production shop, were provided in several proprietary exhibits.<sup>74</sup> The Department's review of the production facility and processes used by UKCG to produce subject merchandise during the POR at verification supported the production process information previously submitted on the record.<sup>75</sup> UKCG also provided a narrative describing how its manufacturing and testing processes differ from similar finishing processes as performed by PRC producers of graphite electrodes, arguing that its machining processes are more exacting, precise, and employ a higher quality control than that found with PRC finishing and, thus, provide significant value-added to the product.<sup>76</sup>

Petitioners argue that, in order to properly evaluate whether UKCG's further manufacturing is minor or insignificant, the Department's analysis must consider UKCG's business processes in comparison to the corresponding processes for a PRC manufacturer of subject SDGEs.<sup>77</sup> As such, Petitioners provide certain proprietary information regarding the production process of SDGEs submitted by respondents in the recent 2008-2010 administrative review of SDGE's from the PRC.<sup>78</sup> Using this proprietary information, Petitioners argue that the processes, production time, R&D costs, facilities, equipment, number of production employees, initial investment and fixed costs needed for a PRC SDGE manufacturer to produce the artificial graphite/unfinished SDGE component used as an input by UKCG is relatively massive when compared to the level of overall investment, R&D, sophistication of production processes, and

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<sup>73</sup> See UKCG First SQR at 3-4, 14-16.

<sup>74</sup> See *id.* at Exhibits 14 and 15 (for production equipment details) and Exhibit 4 (UKCG's 2010 Financial Statement, which details the number of employees in each department).

<sup>75</sup> See UKCG's Verification Report at Section VI.

<sup>76</sup> See UKCG Second SQR at Exhibit 3 and Exhibit 16 and UKCG's Verification Report at II.B. Because UKCG bracketed out the details of this narrative as proprietary, see Analysis Memo for further detail of UKCG's arguments regarding a comparison of its production processes to those of PRC suppliers of SDGE.

<sup>77</sup> See Petitioners' Comments on Processing and Request for Expedition of the Proceeding at 3.

<sup>78</sup> See *id.* at Exhibit 1.

production facilities reported by UKCG, and that the amount of resources involved in machining a graphitized electrode cylinder into a finished SDGE is minor when compared to the entirety of the SDGE production process.<sup>79</sup> UKCG argues that Petitioners' analysis is unreliable because it compares the average number of employees and investment for a large PRC producer of electrodes with UKCG, a small company with a comparably small customer base.<sup>80</sup>

We agree with the Petitioners' analysis of the record information, and find no information on the record to contradict the Department's initial findings in the *Initiation Notice* that the nature of the production process, and extent of production facilities in the United Kingdom are minor in comparison to those utilized in the PRC for the production of the unfinished artificial/synthetic graphite components sourced from the PRC.<sup>81</sup>

As an initial matter, the Department disagrees with UKCG's implication that the comparison between UKCG and the PRC producer is not reliable. Because UKCG only performs final stage processing of SDGE, the Department finds that it is wholly relevant to evaluate the extent of UKCG's portion of production vis-à-vis the PRC manufacturing process for the unfinished artificial/synthetic graphite. Furthermore, we find that the evaluation of the assembly/completion stages (including investment, R&D, production process, and facilities) with regard to the overall manufacture of subject merchandise is consistent with the Department's practice in prior anticircumvention proceedings.<sup>82</sup> In comparing UKCG's production process to the manufacturing process of the unfinished input, the Department finds that the level of investment, R&D, and facilities/equipment needed for UKCG to further manufacture artificial graphite/unfinished SDGE into finished SDGE represents a minor fraction of the overall

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<sup>79</sup> See *id.* at 3-8.

<sup>80</sup> See UKCG's July 18 Submission at 6-7.

<sup>81</sup> See *Initiation Notice*, 76 FR at 14916-17 and Analysis Memo.

<sup>82</sup> See, e.g., *Hangers Anticircumvention Prelim*, 76 FR at 27010-27011, unchanged in *Hangers Anticircumvention Final*.

manufacturing process and is insignificant in comparison to the production process required to manufacture the input UKCG consumes in its facility.<sup>83</sup>

With respect to UKCG's precision finishing and custom specifications, the Department finds no record evidence to suggest that the resources and processes utilized by UKCG's finishing differs in any significant way from the finishing applied by PRC producers of SDGE products subject to the *SDGE Order*. A qualitative analysis demonstrates the processes, types of machinery, and resources involved to be very similar with respect to the actual finishing operations performed by both UKCG and PRC suppliers subject to the *SDGE Order*.<sup>84</sup> Furthermore, the Department finds that, of the 39 steps listed in UKCG's detailed description of its finishing process, 29 of the steps appear to be related to unpacking, packing, movement, cleaning, and/or testing of the merchandise, while another four steps appear to be "as needed" manufacturing. Therefore, only six of the steps listed appear to be related to manufacturing consistently performed on the merchandise in question.<sup>85</sup> The Department's review of the finishing processes (along with the other non-manufacturing and "as-needed" steps) at verification demonstrated that the finishing is essential for the finished products' end use in a metallurgical furnace.<sup>86</sup> However, record evidence pertaining to the relevant statutory value-added criteria indicates that the finishing performed by UKCG does not represent significant processing when compared with the totality of the processing necessary to produce a finished electrode.<sup>87</sup>

UKCG also claims that it performs and applies superior quality control and testing standards to its finishing beyond that of the PRC producers. However, UKCG has not provided

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<sup>83</sup> See Analysis Memo for a full discussion of this proprietary information.

<sup>84</sup> See Analysis Memo for a full discussion of this proprietary information.

<sup>85</sup> See UKCG's Verification Report at Section VI for a full discussion of the production process as reviewed by Department officials. See also Analysis Memo.

<sup>86</sup> See UKCG's Verification Report at Section VI.

<sup>87</sup> See Analysis Memo for a full discussion of this proprietary information.

supporting evidence documenting any inferiority of PRC-finished products. Moreover, even if the Department were to fully accept UKCG's assertions regarding quality control and testing, and their potential competitive impact, UKCG has not demonstrated how such quality control and testing are relevant to the criteria analyzed by the Department in an anticircumvention analysis pursuant to section 781(b) of the Act, which requires the Department to consider processes of "assembly and completion." Thus, we conclude that the quality control and testing – however thorough – is not a "process of assembly or completion" to be considered by the analysis under section 781(b)(2) of the Act.

In sum, pursuant to section 781(b)(2)(C) of the Act, the Department preliminarily finds that the finishing process occurring in the United Kingdom represents a relatively minor portion of the overall manufacturing of finished SDGE in terms of the processes involved, and total production time in comparison to the same elements utilized to manufacture the unfinished electrodes in the PRC that serve as the input for UKCG's finishing operations. Similarly, pursuant to section 781(b)(2)(D) of the Act, we find that the extent of UKCG's production facilities are relatively minor because the materials, energy, labor, and capital equipment used by UKCG in converting the PRC-origin, artificial graphite/unfinished SDGE into finished SDGE is not substantial in comparison to the materials, labor, energy, and capital equipment used by its PRC suppliers in the production of the input.

*781(b)(2)(E): Whether the Value of the Processing Performed in the United Kingdom Represents a Small Proportion of the Value of the Merchandise Imported into the United States*

In prior anticircumvention inquiries, the Department has explained that Congress directed the agency to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the parts and components imported into the

processing country.<sup>88</sup> Additionally, the Department has explained that, following the Uruguay Round Agreements Act, Congress redirected the agency's focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.<sup>89</sup> In this anticircumvention inquiry, we note that the sole direct material input, artificial graphite rods/unfinished SDGE components, used by UKCG to produce finished SDGE were manufactured and supplied by producers in the PRC.<sup>90</sup> Aside from the cost of labor and energy, UKCG did not consume or impart any additional direct material inputs to produce the finished SDGE. Thus, we find that the value of energy and labor consumed by UKCG in the production of the finished SDGE represents an insignificant value when compared to the value of the merchandise sold to the United States.<sup>91</sup> Nonetheless, while the Department believes that this qualitative analysis is sufficient to determine whether the value of processing in the third country constitutes a small portion of the value of the merchandise exported to the United States, the Department has obtained the information necessary to evaluate the proportion of UKCG's processing, as discussed below.

UKCG has provided allocations of total costs during the POR broken down to reflect the processing costs related to the finishing processes it performed on the SDGE it sold to the United States.<sup>92</sup> UKCG suggests that the Department should compare the sales value of the merchandise exported to the United States to the value of the difference between the sales value

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<sup>88</sup> See, e.g., *Pasta Circumvention Prelim*, 68 FR at 46575, unchanged in *Pasta Circumvention Final*. Although that case involved assembly or processing in the United States under section 781(a) of the Act, the language regarding the value of processing or assembly is essentially the same under both sections 781(a)(2)(E) and (b)(2)(E) of the Act. Accordingly, we find that our prior rationale is equally applicable to value of assembly or processing in a third-country under section 781(b)(2)(E) of the Act. See *Hangers Anticircumvention Prelim*, 76 FR at 27012, unchanged in *Hangers Anticircumvention Final*.

<sup>89</sup> See *Pasta Circumvention Prelim*, 68 FR at 46575, unchanged in *Pasta Circumvention Final*.

<sup>90</sup> See, e.g., UKCG's First SQR at 9.

<sup>91</sup> This is consistent with our 781(b)(2)(E) analysis in the recent *Hangers Anticircumvention Prelim*. See *Hangers Anticircumvention Prelim*, 76 FR at 27012, unchanged in *Hangers Anticircumvention Final*.

<sup>92</sup> See UKCG's Second SQR at Exhibit 26 and UKCG's Third SQR at Exhibit 1.

and the price it paid for the artificial graphite input during the POR.<sup>93</sup> UKCG argues that this represents the “value” of the input, as required by the statute, and not simply the “cost” of further manufacture and demonstrates that the value of processing is a significant proportion of the value of the merchandise imported into the United States.<sup>94</sup>

Petitioners request that the Department determine the proportion of UKCG processing value by dividing UKCG’s reported further manufacturing costs by the sum of the Ukrainian artificial graphite SV and UKCG’s reported processing costs (as opposed to the actual value of sales suggested by UKCG).<sup>95</sup> Additionally, Petitioners maintain that UKCG mis-reported certain data. First, Petitioners argue that, by reporting the quantity and value of sales of subject merchandise to the United States during the POR based on invoice date rather than date of shipment, UKCG failed to report a significant percentage of subject sales.<sup>96</sup> Second, Petitioners assert that UKCG did not include certain packing expenses associated with materials acquired by UKCG in the process of importing the artificial graphite/unfinished SDGE inputs from the PRC which were subsequently re-used by UKCG when exporting the finished electrodes to the United States.<sup>97</sup> Third, Petitioners contend that UKCG did not report its sales and further manufacturing costs on the same basis. Specifically, they assert that UKCG included reconditioning and machining costs for re-claimed electrodes in the numerator, but excluded sales of reconditioned

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<sup>93</sup> See UKCG’s Value-Added Submission at 3.

<sup>94</sup> See *id.*

<sup>95</sup> See Petitioners’ Comments on UKCG’s Second SQR at 5. Petitioners also suggest a similar method for calculating this percentage on an unconverted per MT basis based upon a subsequent submission by UKCG. See Petitioners’ Comments on UKCG’s Third SQR at 4-5.

<sup>96</sup> See Petitioners’ Pre-Verification Comments.

<sup>97</sup> See Petitioners’ Surrogate Country Comments at 6-9 and Exhibit 2. See also Petitioners’ Pre-Verification Comments. Because both of Petitioners’ suggested value-added calculations utilize the Ukrainian SV for artificial graphite inputs in the denominator of the calculation, their corresponding assertion that certain packing surrogate values should also be included in the buildup would seem to be applicable to both the calculation discussed above (*i.e.*, the section 781(b)(2)(E) value-added analysis) and the instant value-added calculation. However, because the Department has only employed SVs to determine the value of merchandise produced in the PRC for the instant analysis pursuant to section 781(b)(1)(D) of the Act (and instead utilized UKCG’s reported further processing costs and reported U.S. sales value for the section 781(b)(2)(E) calculation discussed above), we address this surrogate value issue herein.

or re-claimed electrodes from the denominator of the further manufacturing costs to sales value ratio, thus significantly overstating the further processing occurring in the United Kingdom in this calculation. Finally, Petitioners conclude that, notwithstanding these discrepancies, the record supports a conclusion that UKCG's processing is insignificant.<sup>98</sup>

As discussed in the Methodology for Valuing Inputs from the Country Subject to the Antidumping Duty Order on SDGE section, above, the Department does not find it appropriate to use the price paid for the NME-sourced input for the purposes of this anticircumvention proceeding. As a result, we have not used UKCG's suggested calculation, which relies on the actual price paid for the PRC-sourced artificial graphite inputs, for the purposes of the instant analysis. Furthermore, we disagree with UKCG that the difference between input price and sales price should be used as the numerator in the calculation required under section 781(b)(2)(E) of the Act and that the cost of further manufacture does not represent an appropriate "value." The statute directs the Department to consider the "value of processing" performed in the third country which is, by definition, a valuation of all processes performed in the third country (*i.e.*, the cost of further manufacture), and the use of processing costs as the numerator for this calculation is supported by the Department's practice in recent anticircumvention proceedings.<sup>99</sup> With respect to Petitioners' suggested calculation, we do not find it appropriate to derive an export value (*i.e.*, U.S. price) when the actual sales prices exist on the record, and have instead used UKCG's reported value of U.S. sales of subject merchandise as the denominator in the instant calculation.

Additionally, with respect to Petitioners' concerns regarding UKCG's cost and sales reporting, we examined each of these issues at verification. First, with regard to U.S. sales,

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<sup>98</sup> See Petitioners' Comments on UKCG's Second SQR at 7-10. See also Petitioners' Pre-Verification Comments.

<sup>99</sup> See, *e.g.*, *Tissue Paper Anticircumvention Prelim*, unchanged in *Tissue Paper Anticircumvention Final*.

UKCG reported its quantity and value of U.S. sales of subject merchandise using two different methodologies. One methodology (based on invoice, not shipment, date) was used to report sales values and quantities for purposes of the further-processing value-added ratio calculation and the other (based on shipment date (*i.e.*, dispatch from the factory)) was used for the pattern of trade analysis. At verification, the Department noted that U.S. sales of SDGE shipped in June 2010, and reported for the pattern of trade analysis, were not included in the reported quantity and value data for the further-processing value-added ratio calculation because these sales were recorded in UKCG's books based on the invoice date, and therefore were not included in the fiscal year financial statement corresponding to the POR.<sup>100</sup> In this way, UKCG appropriately reported costs and sales corresponding to a single fiscal year for the further-processing value-added ratio calculation, and we relied on this data for this purpose. With regard to the pattern of trade data, UKCG reported sales based on shipment date to reflect the actual pattern of exports during the period in question.

Second, regarding the packing inputs, we note that UKCG reported its per metric ton ("MT") further-processing costs (*i.e.*, the numerator of the calculation used for this analysis, as discussed below) exclusive of all material costs, including packing.<sup>101</sup> As such, we find Petitioners' concern regarding the inclusion of certain packing costs in the value-added buildup to be moot, as we do not find that an exact figure reporting the quantity or value of these re-used inputs to be relevant to the Department's analysis of the 781(b)(2)(E) criteria.

Third, with respect to Petitioners' concerns regarding the inclusion of costs related to reconditioned materials in the numerator of the instant calculation, we find that UKCG sufficiently demonstrated at verification that these added costs are minimal, that the additional

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<sup>100</sup> See UKCG's Verification Report at Section VII.D. See also Analysis Memo.

<sup>101</sup> See UKCG's Verification Report at Section IX and Exhibit 7.



processes are applied to a very small percentage of sales and that the company had no way to track or separate out such costs from total costs and, thus, appropriately allocated the costs over all products.<sup>102</sup> Accordingly, we did not remove these costs from the numerator of our calculation. However, to ensure that the numerator and denominator were derived on the same basis, we included sales of the reconditioned and re-claimed electrodes in the denominator of the calculation.

Finally, the Department has made one additional change to the cost data reported by UKCG. We find that UKCG's inclusion of office/selling/general/administrative overhead costs and interest expenses in the cost build-up to be inappropriate. UKCG cites no authority to support the inclusion of such costs in the cost build-up. On the other hand, section 781(b)(2)(E) of the Act instructs the Department to focus on "the value of processing." Because factory overhead costs directly related to UKCG's processing activities have been separately accounted for,<sup>103</sup> we find that these "other" office/selling/general/administrative overhead and interest expenses do not reflect costs associated with the production of the merchandise and, thus, do not reflect value-added by UKCG's processing. As such, we have removed the per MT general and administrative expense from the buildup of value-added.<sup>104</sup>

To determine the proportion of UKCG's further processing value, the Department has compared UKCG's further processing costs to the actual value of the merchandise exported to the United States during the POR (*i.e.*, U.S. price) and preliminarily finds that the UKCG's value-added comprises only a small proportion of the total export value.<sup>105</sup> This quantitative finding lends additional support to the Department's qualitative finding discussed above that,

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<sup>102</sup> See UKCG's Verification Report at Section VI and Section IX.

<sup>103</sup> See UKCG's Verification Report at Section IX and Exhibit 7.

<sup>104</sup> See Analysis Memo for a full discussion of how the Department has addressed Petitioners' concerns regarding the reporting and of how certain findings from verification have been treated with respect to this value-added analysis.

<sup>105</sup> This information is business proprietary. See Analysis Memo for exact values.

pursuant to section 781(b)(2)(E) of the Act, the value of UKCG's processing represents a small proportion of the value of the merchandise sold in the United States.<sup>106</sup> In sum, pursuant to section 781(b)(1)(C) of the Act, we preliminarily conclude that the record evidence of this anticircumvention inquiry supports a finding that the process or completion of the PRC-origin, artificial graphite/unfinished SDGE into finished SDGE in the United Kingdom is minor or insignificant.

*(D) Whether the Value of the Merchandise Produced in the Foreign Country to which the Order Applies Is a Significant Portion of the Total Value of the Merchandise Exported to the United States*

Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which an antidumping duty order applies must be a significant portion of the total value of the merchandise exported to the United States in order to find circumvention. As discussed in the Surrogate Country and Factor Valuation sections, above, because semi-manufactured artificial graphite/unfinished SDGE components are sourced entirely from suppliers in the PRC, an NME country, the Department has determined to value the input merchandise produced in the country to which the *SDGE Order* applies by using Ukrainian import data for HTS subcategory 3801.10.

Similar to its suggested calculation for the analysis under section 781(b)(2)(E) of the Act, above, UKCG suggests that the Department only use actual prices paid in this analysis, resulting in a simple calculation of UKCG's reported price paid for inputs divided by the total export sales value,<sup>107</sup> whereas Petitioners suggest that the Department divide the per-piece or per-Kg price of

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<sup>106</sup> See Analysis Memo.

<sup>107</sup> See UKCG's Value-added Submission at 2.

processing by the SV.<sup>108</sup> Furthermore, as discussed in the section 781(b)(2)(E) analysis, above, Petitioners assert that any analysis which utilizes an SV buildup for the value of materials sourced from the PRC should include the value of any packing materials acquired from the PRC which were subsequently re-used to export the finished electrodes to the United States, in addition to the value of the artificial graphite inputs.<sup>109</sup>

As previously stated, the Department does not find the use of UKCG's prices paid for the PRC-sourced input to be appropriate in this circumstance because of the PRC's designation as an NME country.<sup>110</sup> Furthermore, the Department finds that Petitioners' suggested calculation, which expresses the cost of further manufacture as a percentage of the input value, does not address the intent of this segment of the analysis (*i.e.*, whether the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States).<sup>111</sup> As such, we have not used Petitioners' proposed calculation in our analysis.

With respect to the packing inputs, we agree with Petitioners that the analysis under 781(b)(1)(D) of the Act must take into account the full value of all materials sourced from the

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<sup>108</sup> See Petitioners' Comments on UKCG's Second SQR at 5-6 and Petitioners' Comments on UKCG's Third SQR at 3-4. Petitioners suggest two value-added calculations: 1) third country processing as a percentage of the value of the finished good (calculated by dividing UKCG's reported costs by the sum of the costs and the Ukrainian SV, as described in the discussion of our analysis of section 781(b)(2)(E) of the Act, above); and 2) UKCG's processing costs as a percentage of the Chinese input (calculated by simply dividing UKCG's reported costs by the Ukrainian SV). See Petitioners' Comments on UKCG's Second SQR at 5-6 and Petitioners' Comments on UKCG's Third SQR at 3-4. Because the former calculation expresses UKCG's reported cost of further manufacturing as a percentage of a buildup to U.S. price, we have discussed this calculation in the 781(b)(2)(E) value-added analysis section, above, and address the latter calculation herein. However, as discussed below, this calculation (where the cost of further manufacture is expressed as a percentage of the input) does not address the statutory requirements of analysis provided by either section 781(b)(2)(E) or 781(b)(1)(D) of the Act.

<sup>109</sup> See Petitioners' Surrogate Country Comments at 6-9 and Exhibit 2. See also Petitioners' Pre-Verification Comments.

<sup>110</sup> Although the Department does not agree with UKCG's suggested methodology to use the actual purchase price for inputs in this calculation, we note that UKCG's own analysis of section 781(b)(1)(D) of the Act using this methodology "shows that this percentage qualifies as 'a significant portion' of the value of the total merchandise exported." See UKCG's Value-Added Submission at 2. Thus, regardless of the methodology used, UKCG does not contest that the finding that the PRC-produced artificial graphite inputs represent a significant portion of the total value of finished merchandise exported to the U.S.

<sup>111</sup> Nor does this calculation address whether the value-added by UKCG's processing represents a significant value of the merchandise imported into the U.S., pursuant to section 781(b)(2)(E) of the Act, as discussed above.

foreign country to which the order applies, including any packing materials. However, because we have relied on Ukrainian import prices for inputs in question, as reported by GTA, which represent market prices paid for artificial graphite inputs inclusive of any packing, the Department has already accounted for the value of any re-used packing materials in its analysis. Finally, our analysis under Section 781(b)(1)(d) of the Act shows the artificial graphite SV to be a significant portion of the finished product export value even without the inclusion of these materials.<sup>112</sup>

As established in the analysis of section 781(b)(2)(E) of the Act, above, the Department determined UKCG's sales value of finished merchandise exported to the United States based on actual sales to the United States. Therefore, we determine that the appropriate calculation expresses the SV for the artificial graphite input in question as a percentage of UKCG's reported total sales value. In comparing the SV of the artificial graphite/unfinished electrode input to UKCG's total sales value, this analysis finds that the PRC produced merchandise represents a significant percentage of the sales value of UKCG's exports of finished merchandise.<sup>113</sup> Therefore, based on our analysis and record evidence, we find that the value of the PRC-origin artificial graphite/unfinished SDGE constitutes a significant portion of the value of the finished product ultimately exported to the United States.

#### Other Factors to Consider

In making a determination whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(3) of the Act instructs the Department to take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether

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<sup>112</sup> Moreover, as discussed above, UKCG does not contest this finding. Instead, UKCG's own calculations confirm that the value of the input represents a significant portion of the value of the exported merchandise and requests that the Department focus its analysis on whether the process of assembly or completion in the U.K. is minor or insignificant pursuant to section 781(b)(2)(E) of the Act. *See* UKCG's Value-Added Submission at 2.

<sup>113</sup> This information is business proprietary. *See* Analysis Memo for exact values.

affiliation exists between the manufacturer or exporter of the merchandise in the country subject to the order and the person who uses the merchandise to assemble or complete in the third country the merchandise that is exported to the United States; and (C) whether imports into the third country of the merchandise described in section 781(b)(1)(B) of the Act have increased since the initiation of the original investigation. Each of these factors is examined below.

*(A) Pattern of Trade and Sourcing*

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in the sourcing patterns. According to UKCG, it started sourcing PRC-origin, artificial graphite rods/unfinished SDGE component inputs and exporting finished SDGE processed from these inputs to the United States in 2002.<sup>114</sup> UKCG provided separate worksheets reporting the total amount of finished SDGE exported to the United States and the total amount of artificial graphite/unfinished SDGE inputs sourced from the PRC since 2002 (in MTs, broken down into monthly and yearly totals).<sup>115</sup>

With respect to the timing and quantities of UKCG's exports of finished SDGE to the United States, we note that between 2003 and 2008 UKCG exported an average of X metric tons a year.<sup>116</sup> Between 2003 and 2007, the export volume for any given year remained relatively consistent, ranging from 76 to 123 percent of X, wherein UKCG typically made shipments of SDGE to a limited set of U.S. customers. In 2008, the year of the Petition and LTFV investigation, UKCG had a very limited set of SDGE sales to the United States. However,

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<sup>114</sup> See UKCG's First SQR at 15. See also UKCG's Verification Report.

<sup>115</sup> UKCG provided these worksheets at Exhibits 12 and 13 of its September 6, 2011, Second SQR, but noted that data were only available from August 2003.

<sup>116</sup> See UKCG's Second SQR at Exhibit 12. Due to the proprietary nature of this information, we are using the baseline "X" to represent the average quantity of UKCG's yearly exports of SDGE to the U.S. from 2003 until 2008. See Analysis Memo for actual values and full discussion of the pattern of trade analysis. Furthermore, the individual sale-specific information reported in these databases was reported with a date corresponding to the date the sale was dispatched from UKCG's factory. As a result, our analysis of the monthly and yearly trends relies on the sales date as reported for this analysis (*i.e.*, dispatch date), regardless of when the sale may have been booked or invoiced by UKCG. Also, our analysis considers yearly trends based on the calendar year, as reported, and not the fiscal year.

beginning in January 2009, the month the final determination of the LTFV investigation were published, UKCG's exports of finished SDGE increased dramatically. In 2009, UKCG shipped finished SDGE to a larger set of U.S. customers for a total volume of 435 percent of X. In 2010, the total quantity of UKCG's shipments of finished SDGE to the U.S. was 1085 percent of the X baseline. Indeed, UKCG's exports of finished SDGE to the United States in the two years following the publication of the final determination were 2.65 times the volume exported in the previous five and a half years combined.<sup>117</sup>

The Department's analysis of the corresponding data regarding the timing and quantities of UKCG's purchases of PRC-produced artificial graphite/unfinished SDGE inputs,<sup>118</sup> however, demonstrates that it contains identical data as the pattern of trade in sales exhibit discussed above and, therefore, is not representative of actual purchase quantity.<sup>119</sup> However, due to the time constraints of the verification, the Department did not discover this discrepancy until after verification when reviewing this data in comparison to the sales data reviewed at verification.

Although the record lacks the specific input purchase quantity information necessary for the Department's pattern of trade in sourcing analysis, we find sufficient information otherwise exists on the record to demonstrate that there is a strong correlation between UKCG's pattern of trade in sourcing and its pattern of trade in sales (where the quantity figures have been reported

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<sup>117</sup> See *id.*

<sup>118</sup> See UKCG's Second SQR at Exhibit 13.

<sup>119</sup> Both documents are based off of a master trade spreadsheet kept by UKCG's managing director, which tracks all sales (including the tonnage of each sale) and contains a great deal of information corresponding to each sale, including the supplier. See UKCG's Verification Report at III.G.3, for a discussion of this master trade sheet used in UKCG's reporting. Further review confirmed that pattern of trade in sourcing shown in Exhibit 13 of UKCG's Second SQR was identical to the list provided for sales in Exhibit 12 of the same submission, with the supplier name provided for each sale rather than the customer name, and that the minor difference in yearly quantities between the two exhibits (previously assumed to be a result of the yield loss from the finishing and/or lag between delivery date of the input and sale date of the finished product) was merely a result re-conditioned merchandise having been excluded from the latter dataset. Thus, the pattern of trade in sourcing information on the record does not actually list input purchases based on date of purchase and quantity purchased but instead re-states the pattern of trade in sales information (*i.e.*, month of sale and quantity of the sale) showing the supplier of the artificial graphite input used to produced the finished product rather than the name of the U.S. customer.

appropriately and verified). For example, the facts available on the record demonstrate that artificial graphite rods are the sole input utilized by UKCG in the production of finished SDGE and the PRC-produced inputs are procured to fulfill specific sales orders and are not typically held in inventory longer than the time needed for final machining.<sup>120</sup> As such, we have relied on this other information as facts available, pursuant to section 776(a)(1) of the Act, to determine that UKCG's pattern of trade in sourcing of artificial graphite inputs has increased at a rate corresponding to UKCG's pattern of trade in sales of finished SDGE to the United States, as discussed above.

Additionally, the Department examined: A) U.S. import data obtained from GTA noting the monthly import quantity of HTS 8545.11 from the PRC to the United States between 2004 and 2011, to evaluate whether imports of finished SDGE from the PRC have decreased since the issuance of the *SDGE Order*, and B) U.S. import data obtained from GTA noting the monthly import quantity of HTS 8545.11 into the United States from the United Kingdom since August 2003, to corroborate UKCG's pattern of trade discussed above.<sup>121</sup> A review of the data shows that PRC exports of finished SDGE to the United States under the 8545.11. HTSUS category specific to graphite electrodes (both large and small diameter), which more than doubled in quantity between 2004 and 2008 (the year of the Petition and LTFV investigation), then decreased to just 41 percent of its 2008 level in 2009 and 53 percent of its 2008 level in 2010.<sup>122</sup> Imports to the United States from the United Kingdom for the identical HTSUS category increased by 1458 percent between 2008 and 2009 and 48 percent between 2009 and 2010. In

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<sup>120</sup> See, e.g., UKCG's Verification Report at Section IV. Due to the proprietary nature of certain additional information related to UKCG's pattern of trade in sourcing, see Analysis Memo for full discussion of the pattern of trade analysis.

<sup>121</sup> See Analysis Memo. Information for U.S. imports of both U.K. and PRC merchandise listed under the 8545110010 HTSUS subcategory specific to SDGE is not available prior to 2010, so the 8545110000 HTSUS category specific to both large and small diameter graphite electrodes was used instead.

<sup>122</sup> Although U.S. import data have only been broken out into large, small, and "other" specific data since 2010, the trends in this data show that imports of SDGE from the PRC have continued to decrease since 2010. See Analysis Memo.

fact, the reported quantity of imports of HTS 8545.11 from the United Kingdom to the United States since 2004 moved in proportion with UKCG's reported export quantities in the same period.<sup>123</sup> As such, an analysis of the pattern of trade based on the quantity of imports into the United States, reported in the GTA data, serves to indicate a significant upward trend in imports from the United Kingdom with a corresponding downward trend from the PRC since the publication of the *SDGE Order*. U.S. imports of electrodes from the United Kingdom were up 883 percent from the 2003-2008 baseline in 2009, 1307 percent in 2010, and the combined total of 2009-2010 import quantities (*i.e.*, imports subsequent to the issuance of the *SDGE Order*) was over four times higher than the total quantity of all electrodes imported into the United States from the United Kingdom in the period between August 2003 and December 2008.<sup>124</sup>

Accordingly, we find that the data show that PRC exports of SDGE have decreased significantly whereas U.K. exports to the United States, UKCG's exports to the United States, and UKCG's sourcing of relevant inputs from the PRC, have increased since the initiation of the LTFV investigation. Therefore, based on the facts on the record, we find that the patterns of trade, discussed above, since the initiation of the LTFV investigation and the imposition of the *SDGE Order* supports a finding that circumvention has occurred.

*(B) Affiliation*

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the artificial graphite/unfinished SDGE in the country subject to the order is affiliated with the entity that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the covered merchandise is related to the third country assembler and is a

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<sup>123</sup> See Analysis Memo.

<sup>124</sup> See Analysis Memo.



critical element in our evaluation of circumvention.<sup>125</sup> Prior to the *Initiation Notice*, UKCG claimed that it is not affiliated with any PRC suppliers, and no interested party to this proceeding has contested this fact. Since the *Initiation Notice*, UKCG has reiterated that it has no affiliation with any of its suppliers and materials submitted subsequent to the *Initiation Notice* further support this fact.<sup>126</sup> Therefore, we preliminarily determine that UKCG is not affiliated with any PRC-producers of artificial graphite/unfinished SDGE.

*(C) Whether Imports Have Increased*

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, the United Kingdom) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.*, artificial graphite rods/unfinished SDGE) have increased since the initiation of the LTFV investigation. As described in detail in the *Pattern of Trade and Sourcing* section above, the Department finds that UKCG's own data demonstrate a significant increase in the sourcing of PRC-produced artificial graphite/unfinished SDGE inputs since the initiation of the LTFV investigation. However, because the 3801.10 HTS subcategory of the input (inclusive of all types of artificial graphite forms) is a broader basket category than the HTS 8545.11 category of the finished product (inclusive of only carbon electrodes used in furnaces), a comparison of the quantity of U.K. imports from the PRC under HTS 3801.10 to the reported quantity of UKCG's imports of the artificial graphite input during the POR does not exhibit the same level of

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<sup>125</sup> See, e.g., *Tissue Paper Anticircumvention Prelim*, unchanged in *Tissue Paper Anticircumvention Final*.

<sup>126</sup> See UKCG's First SQR at 20 and Exhibit 4 (containing UKCG's financial statements).

correspondence between the two datasets as is seen with the finished product above.<sup>127</sup>

Nevertheless, GTA data for U.K. imports of HTS 3801.10 do show that artificial graphite imports from the PRC have increased an average of 60 percent per year since 2005 and, although the quantities of artificial graphite imported into the United Kingdom and the PRC-sourced inputs reported by UKCG do not approximate one another, a comparison of the trends in the monthly import totals in both datasets during the period January 2008-December 2010 demonstrates a correlation in the pattern of trade.<sup>128</sup>

Accordingly, we find that the data show that, in addition to the aforementioned increase in UKCG's sourcing of relevant inputs from the PRC, PRC exports of unfinished artificial graphite to the United Kingdom have also increased significantly since the initiation of the LTFV investigation.

#### Summary of Analysis

We preliminarily find that UKCG has circumvented the *SDGE Order* in accordance with sections 781(b)(1) and (2) of the Act. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that the merchandise sold in the United States is identical to merchandise that is subject to the *SDGE Order* and was completed in the United Kingdom from merchandise which is: a) indistinguishable from merchandise covered by the explicit language of the scope of the *SDGE Order*, and b) produced in the PRC, the country to which the *SDGE Order* applies. Additionally,

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<sup>127</sup> For example, whereas the relative narrowness of the products included in the 8545.11 category, along with the presumably limited number of U.K. exporters of 8545.11 merchandise in general, resulted in a significant correlation between the quantity totals of all imports of finished SDGE into the U.S. from the U.K. and UKCG's reported totals, the broader scope of products included in the 3801.10 category, along with a presumably larger pool of U.K. importers of 3801.10 merchandise, results in a quantity of artificial graphite imports into the U.K. from the PRC reported by GTA which greatly exceeds the reported quantity of SDGE sold to the U.S. during the period reviewed, as reported in Exhibits 12 and 13 of UKCG's Second SQR. Because, as discussed above, the Department has applied fact available pursuant to section 776(a)(1) of the Act to conclude that UKCG's pattern of trade in sourcing closely resembles its pattern of trade in sales, we find that this import quantity of artificial graphite also greatly exceeds the amount of artificial graphite inputs sourced by UKCG for use in the production of subject merchandise.

<sup>128</sup> See Analysis Memo.

pursuant to section 781(b)(1)(C) of the Act, we find that the process of completion in the United Kingdom to be minor and insignificant based on each facet of the analysis under section 781(b)(2) of the Act. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States. Finally, upon taking into consideration section 781(b)(3) of the Act, our analysis of the pattern of trade, including sourcing, and an affirmative finding of an increase in imports of artificial graphite/unfinished SDGE between the PRC and United Kingdom since the initiation of the initial LTFV investigation, action is appropriate to prevent evasion of the *SDGE Order* pursuant to 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to find that, during the period of time examined, there was circumvention of the *SDGE Order* as a result of UKCG's conversion of the PRC-origin artificial graphite/unfinished SDGE components to finished SDGE in the United Kingdom, as discussed above.

#### Suspension of Liquidation

As stated above, the Department has made a preliminary affirmative finding of circumvention of the *SDGE Order* by UKCG. This circumvention finding applies to SDGE produced by UKCG from PRC-origin inputs. A review of certain information, bracketed as proprietary, that is contained in various submissions demonstrates that UKCG may have sales of finished SDGE to the United States further manufactured from non-PRC-sourced artificial graphite/unfinished SDGE inputs,<sup>129</sup> and that UKCG may be able to differentiate which of its exports of finished SDGE to the United States are sourced from non-PRC-origin inputs.<sup>130</sup> Further proprietary statements demonstrate that UKCG sources a certain percentage of relevant

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<sup>129</sup> See, e.g., UKCG's First SQR at 20.

<sup>130</sup> See UKCG's First SQR at 8.

inputs from PRC supplier(s) of SDGE with their own antidumping duty rates and that UKCG may be able to identify these exports and relevant PRC suppliers.<sup>131</sup> Moreover, UKCG stated and the Department verified that its record-keeping system is able to track orders of artificial rod inputs from the PRC (or elsewhere) to the production process of finished SDGE and through to the subsequent shipment to the customer.<sup>132</sup> Thus, the Department preliminarily determines, based on the aforementioned record evidence, that UKCG is able to provide documentation to its U.S. importers that would allow U.S. Customs and Border Protection (“CBP”) to distinguish between UKCG’s SDGE sourced from a PRC supplier subject to the PRC-wide rate, UKCG’s SDGE sourced from a PRC supplier subject to an individual rate, and UKCG’s exports of non-PRC-sourced SDGE which are not within the scope of the *SDGE Order*.<sup>133</sup>

In accordance with section 19 CFR 351.225(l)(2), the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties at the applicable rate on unliquidated entries of SDGE produced and/or exported by UKCG that were entered, or withdrawn from warehouse, for consumption on or after March 18, 2011, the date of initiation of the anticircumvention inquiry. Where the importer can demonstrate that the primary input material was produced by a company that has a separate rate, CBP will collect that company’s cash deposit rate. Where the importer can demonstrate that the SDGE at issue was produced from reconditioned rods or rods sourced from a third country producer, CBP should not suspend those entries or collect AD duties on those entries. For all other entries of merchandise exported by UKCG, CBP will require a cash deposit equal to the PRC-wide rate of 159.64 percent. For all entries of finished SDGE produced from artificial graphite inputs subject to the scope of this

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<sup>131</sup> See UKCG’s First SQR at 8-9.

<sup>132</sup> See UKCG’s Fourth SQR at 1-2.

<sup>133</sup> UKCG stated that it retains financial records for seven years, in accordance with law. See UKCG’s Fourth SQR at 1-2. Furthermore, at verification, the Department confirmed that UKCG has maintained all necessary documentation going back to the March 18, 2011, date of initiation.

proceeding which UKCG believes should be assessed at a rate other than the PRC-wide rate, UKCG is required to furnish its customers/importers with a certification identifying, as appropriate, the manufacturer/exporter of the primary input into the SDGE it processes in the U.K. prior to exportation to the United States. For all entries of SDGE produced from inputs not subject to the scope of this proceeding (*i.e.*, from reconditioned inputs or inputs produced in a third country), UKCG is required to furnish its customers/importers with a certification identifying the supplier or producer (as appropriate)<sup>134</sup> of the primary input into the SDGE it processes in the U.K. prior to exportation to the United States. Importers are also required to sign and maintain certifications for these types of entries. The certification formats are provided in Appendices I, II, III, and IV to this notice. The importer will be required to retain each certificate for individual entries for the later of: 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any antidumping duty litigation regarding such entries. It is the importer's responsibility to accurately declare to CBP the appropriate antidumping duty rate (or that no antidumping duty applies) for each entry. Accordingly, the Department will instruct CBP to: i) require cash deposits at the rate established for the PRC supplier if that supplier has its own rate; ii) require cash deposits at the PRC-wide rate of 159.64 percent if the PRC supplier does not have its own rate or if the importer cannot identify the supplier. If the importer is able to demonstrate that the source of the artificial graphite/unfinished SDGE used in the production of finished SDGE imported from UKCG is not of PRC-origin or the finished SDGE is produced from reconditioned inputs, the imports are not

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<sup>134</sup> UKCG purchases broken/cracked or otherwise unusable electrodes from sources in various non-PRC countries, refurbishes them, and re-sells them for use as finished electrodes. These reclaimed products are not subject to the scope of this proceeding. Although UKCG can document the country in which it sourced the reclaimed electrodes, UKCG has stated to the record that it has no way of identifying the original country in which the electrode was initially produced. *See* UKCG's May 21, 2012 Submission. As a result, the Department is only requiring that UKCG certify to the supplier of the primary reconditioned input.

subject to the *SDGE Order*.<sup>135</sup> These instructions will apply to entries of SDGE produced and/or exported by UKCG that were entered, or withdrawn from warehouse, for consumption on or after March 18, 2011, the date of initiation of the anti-circumvention inquiry. For unliquidated entries made prior to March 18, 2011, UKCG will be required to provide the above-noted documentation to the importer. The importer will be required to provide the documentation to CBP within the time frame established by CBP. Consistent with past practice the Department has determined that a third-country AD case number for the United Kingdom is necessary as part of this determination for importers to identify merchandise as subject merchandise, and to ensure that CBP can collect AD duties on subject SDGEs that are processed in and exported from the United Kingdom.<sup>136</sup>

#### Notification to the International Trade Commission

The Department, consistent with section 781(e) of the Act, has notified the ITC of this preliminary determination to include the merchandise subject to this anticircumvention inquiry within the *SDGE Order*. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If,

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<sup>135</sup> The exporter-supplied certification will serve as the initial demonstration supporting the importer's claim regarding which antidumping duty rate (or that no antidumping duty rate) is applicable. However, should CPB determine that further demonstration is warranted, it may seek additional documentation from the importer pursuant to 19 CFR 163.6(a) and other applicable regulations and statutory authority. Under 19 CFR 163.6(a), CBP may require the production of entry records from any party required to maintain such records as defined in 19 CFR 163.2(a). 19 CFR 163.1(a)(2)(vii) defines such records to include any information made or normally kept in the ordinary course of business that pertains to an activity "required to be undertaken pursuant to the laws or regulations administered by Customs," which would include the proper assessment of antidumping duties. As such, for the purpose of demonstrating that a rate other than the PRC-wide rate should be assessed to entries subject to this proceeding, UKCG should be prepared to provide to its importers, where applicable, documentation to substantiate the supplier claim made on the UKCG certification to the importer. Thus, if CBP should determine further demonstration is necessary and request supporting documentation from the importer, UKCG will be responsible for providing to the importer additional documentation pursuant to 19 CFR 163.6(a) to substantiate the certification.

<sup>136</sup> See, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906, 14907 (March 18, 2011) (noting that "the Department has coordinated with CBP to resolve issues arising from differences between the Department's and CBP's respective country-of-origin classifications and from technical restrictions in CBP's electronic filing systems. As a result, the Department has added several case numbers to the Case Reference file within the Automated Commercial Environment to ensure that requisite entries are and can be properly claimed as scope merchandise.").

after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 15 days to provide written advice to the Department.

#### Public Comment

Because the Department may seek additional information, the Department will establish the case and rebuttal brief schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. These comments will be addressed in our final determination.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days after date of publication of this preliminary determination to the Assistant Secretary for Import Administration, U.S. Department of Commerce, and electronically file the request via the Department's Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).<sup>137</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a hearing is requested, we will notify parties of the time and date for the hearing to be held at the U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230. Issues raised in the hearing will be limited to those raised in the case briefs, pursuant to 19 CFR 351.310(c).

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<sup>137</sup> See 19 CFR 351.303(b) and 19 CFR 351.310(c).

### Final Determination

The Department intends to issue the final determination with respect to this anticircumvention inquiry no later than July 31, 2012, including the results of the Department's analysis of any written comments. This preliminary affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

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Paul Piquado  
Assistant Secretary  
for Import Administration

May 30, 2012  
Date



## Appendix I

### **Certification of UK Carbon and Graphite Co., Ltd. for Non-Subject SDGE Exports**

I hereby certify that I am an official of UK Carbon and Graphite Co., Ltd. (“UKCG”) and that that the small diameter graphite electrode products processed by UKCG in the United Kingdom into the small diameter graphite electrodes included within this shipment pursuant to Invoice numbers<sup>138</sup>.

- Invoice
- Invoice...

were produced from reconditioned rods or from non Chinese-origin artificial graphite rods.

By signing this certificate, UKCG also hereby agrees to:

- Maintain sufficient documentation supporting the above statement for all non-Chinese-origin or reconditioned artificial graphite rods/unfinished SDGE used to produce the exported small diameter graphite electrode products.
- Provide such documentation to the importer of the merchandise subject to this certification if required by U.S. Customs and Border Protection (“CBP”). UKCG is required to maintain all such documentation for individual entries until the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- Submit to verification by the U.S. Government of the underlying documentation supporting the above statement pursuant to the administration of an antidumping duty proceeding covering small diameter graphite electrodes from the People’s Republic of China.
- Provide this certification to the U.S. customer/importer at the time of shipment.

UKCG agrees that failure to submit to verification of the documentation by the U.S. Government will result in immediate revocation of certification rights and understands that the importer of the merchandise will be required to post a cash deposit equal to the PRC-wide entity rate on all entries of small diameter graphite electrode products sourced from UKCG. In addition, if the Department of Commerce (“Commerce”) identifies any misrepresentation or inconsistencies regarding the certifications, UKCG recognizes that the matter may be reported to CBP by Commerce for possible enforcement action.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>138</sup> If an individual invoice is representative of merchandise produced from both Chinese-origin artificial graphite rod inputs, as well as non-subject inputs, UKCG shall identify the non-subject merchandise in this certification, and will provide a companion certification identifying the subject merchandise based on the certification provided below in Appendix III.

## Appendix II

### **Certification of U.S. Importer for Non-Subject SDGE Exports**

I hereby certify that I am an official of {insert name of company importing small diameter graphite electrodes (“SDGE”) from UK Carbon and Graphite Co., Ltd. (“UKCG”),} and that, to the best of my knowledge, the SDGE imported under the following entry numbers was produced from either reconditioned artificial graphite rods/unfinished SDGE or non-PRC-origin artificial graphite rods/unfinished SDGE:

- |           |                    |
|-----------|--------------------|
| • Entry # | Date of Entry:     |
| • Entry # | Date of Entry: ... |

By signing this certificate, the importer stipulates its understanding that:

- It is the importer’s responsibility to accurately declare this entry upon importation to U.S. Customs and Border Protection (“CBP”).
- The importer of the above certified merchandise is required to maintain this certification for individual entries for the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- The importer will be required to produce this certification and the exporter’s certification upon the request of CBP.
- The importer may be required to produce additional documentation, sourced from UKCG, to substantiate the supplier claim made in the certification in response to a request from CBP.
- Should further investigation prove this certification to be false, CBP may take appropriate action to penalize the importer. As such, it is the importer’s responsibility to provide any documentation from UKCG that may be needed to substantiate the above certified claims.
- The importer is required to complete this certification on the date of entry.
- If the importer is not able to demonstrate that the source of the artificial graphite rods/unfinished SDGE used in the production of finished SDGE imported from UKCG is of reconditioned rods or of non-PRC-origin, the imports are considered subject to the SDGE Order.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Appendix III

#### **Certification of UK Carbon and Graphite Co., Ltd. for Exports of PRC-Origin SDGE Sourced from PRC-Producers**

I hereby certify that I am an official of UK Carbon and Graphite Co., Ltd. (“UKCG”) and that the small diameter graphite electrode (“SDGE”) products processed by UKCG in the United Kingdom into the small diameter graphite electrodes included within this shipment pursuant to Invoice numbers<sup>139</sup>:

- Invoice
- Invoice...

were produced from Chinese-origin artificial graphite rods/unfinished SDGE subject to the antidumping duty order on small diameter graphite electrodes from the People’s Republic of China (“PRC”) sourced from \_\_\_\_\_ (Name of PRC Manufacturer, or if the exporter is other than the manufacturer, the PRC exporter)<sup>140</sup>

By signing this certificate, UKCG also hereby agrees to:

- Maintain sufficient documentation supporting the above statement for all Chinese-origin artificial graphite rods/unfinished SDGE used to produce the exported small diameter graphite electrode products.
- Provide such documentation to the importer of the merchandise subject to this certification if required by U.S. Customs and Border Protection (CBP). UKCG is required to maintain all such documentation for individual entries until the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- Submit to verification by the U.S. Government of the underlying documentation supporting the above statement pursuant to the administration of an antidumping duty proceeding covering small diameter graphite electrodes from the People’s Republic of China.
- Provide this certification to the U.S. customer/importer at the time of shipment.

UKCG agrees that failure to submit to verification of the documentation by the U.S. government will result in immediate revocation of certification rights and that the importer of the merchandise will be required to post a cash deposit equal to the China-wide entity rate on all entries of small diameter graphite electrode products sourced from UKCG. In addition, if the Department of Commerce (“Commerce”) identifies any misrepresentation or inconsistencies regarding the certifications, UKCG recognizes that the matter may be reported to the U.S. Customs and Border Protection by Commerce for possible enforcement action.

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<sup>139</sup> If an individual invoice reflects the sale of subject and non-subject merchandise, UKCG shall provide to the customer/importer two certifications (and relevant supporting documentation) identifying the respective subject and non-subject merchandise, as discussed above.

<sup>140</sup> If there is more than one exporter/manufacturer, identify the exporter/manufacturer with each product from each invoice.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix IV

### **Certification of U.S. Importer for PRC SDGE Exports**

I hereby certify that I am an official of {insert name of company importing small diameter graphite electrodes (“SDGE”) from UKCG,} and that, to the best of my knowledge, the SDGE imported under the following entry numbers was produced from PRC-origin artificial graphite rods/unfinished SDGE:

- |           |                    |
|-----------|--------------------|
| • Entry # | Date of Entry:     |
| • Entry # | Date of Entry: ... |

By signing this certificate, the importer stipulates its understanding that:

- It is the importer’s responsibility to accurately declare this entry upon importation to U.S. Customs and Border Protection (“CBP”) as an entry subject to antidumping duties and to accurately report the cash deposit rate applicable to these imports.
- The importer of the above certified merchandise is required to maintain this certification for individual entries for the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- The importer will be required to produce this certification and UKCG’s certification upon the request of CBP.
- The importer may be required to produce additional documentation, sourced from UKCG, to substantiate the supplier claim made in the certification in response to a request from CBP.
- Should further investigation prove this certification to be false, CBP may take appropriate action to penalize the importer. As such, it is the importer’s responsibility to provide any documentation from UKCG that may be needed to substantiate the above certified claims.
- The importer is required to complete this certification on the date of entry.
- For entries of SDGEs from UKCG which the importer believes should be assessed at a rate other than the PRC-wide rate, the importer must have a certification from UKCG identifying the supplier of the artificial graphite rods/unfinished SDGE subject to the antidumping duty order on SDGEs from the PRC.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_